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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

DAVID ANTHONY BATTLE,

Defendant and Appellant.

E055356

(Super.Ct.No. SWF1102179)

OPINION

APPEAL from the Superior Court of Riverside County. Kelly L. Hansen, Judge.  
Affirmed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On September 14, 2011, a felony complaint charged defendant and appellant David Anthony Battle with (1) willfully and unlawfully driving or taking a vehicle under Vehicle Code section 10851, subdivision (a) (count 1); (2) willfully and unlawfully

receiving stolen property under Penal Code section 496, subdivision (a) (count 2); and (3) possessing a firearm while having been previously convicted of a felony under Penal Code section 12021, subdivision (a)(1) (count 3). The complaint also alleged that as to count 1, defendant had previously suffered a conviction under Vehicle Code section 10851, subdivision (a); and as to count 2, defendant was armed with a firearm under Penal Code section 12022, subdivision (a)(1). The complaint further alleged that defendant suffered five prior prison terms under Penal Code section 667.5.<sup>1</sup>

On November 7, 2011, according to a plea agreement, defendant pled guilty to counts 1 and 3. Defendant also admitted that he committed count 1, willfully and unlawfully taking a vehicle, after having previously suffered a conviction for willfully and unlawfully taking a vehicle. Furthermore, defendant admitted two of the five prison term allegations. In exchange, the parties agreed to a total sentence of six years—an upper term of four years on count 1, consecutive one-year terms on the two priors, and a concurrent term of one and one-third years on count 3.

Defendant filed a notice of appeal and requested a certificate of probable cause. The trial court denied defendant's request occurring after the plea.<sup>2</sup>

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

<sup>2</sup> On February 24, 2012, we approved the parties' stipulation that defendant's "notice of appeal be deemed amended to state: 'Appellant was sentenced on November 7, 2011 and the grounds of the appeal are (1) this appeal is based on the sentence or other matters occurring after the plea.'"

## I

### STATEMENT OF FACTS

At the time of the plea, defendant acknowledged that on September 8, 2011, he drove a Ford Crown Victoria, knowing that the vehicle was stolen. Defendant had previously been convicted of driving a stolen vehicle. On the same date, he was in possession of a shotgun, having been previously convicted of a felony.

## II

### ANALYSIS

After defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738 setting forth a statement of the case, a summary of the facts, and potential arguable issues and requesting this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, and he has done so. In his seven-page supplemental brief, defendant raises two arguments. He contends that (1) part of the crime of unlawfully taking a vehicle and possessing a weapon “did not occur in or around Riverside County”; and (2) he received ineffective assistance of counsel by his trial counsel. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error.

“When a defendant pleads not guilty and is convicted as the result of a trial, in general any issue bearing on the determination of guilt and apparent from the record is

cognizable on appeal. (See § 1237.) By contrast, when a defendant pleads guilty or no contest and is convicted without a trial, only limited issues are cognizable on appeal. A guilty plea admits every element of the charged offense and constitutes a conviction [citations], and consequently issues that concern the determination of guilt or innocence are not cognizable. [Citations.] Instead, appellate review is limited to issues that concern the ‘jurisdiction of the court or the legality of the proceedings, including the constitutional validity of the plea.’ [Citations.]” (*In re Chavez* (2003) 30 Cal.4th 643, 649.) In addition, “section 1237.5 authorizes an appeal [following a guilty plea] only as to a particular category of issues,” and to have these issues considered on appeal, a defendant must first take the additional procedural step of obtaining a certificate of probable cause.<sup>3</sup> (*Id.* at p. 650.)

All of the issues raised in defendant’s notice of appeal and supplemental brief concern the determination of guilt or innocence or are not reviewable under section 1237.5. As set forth above, defendant requested a certificate of probable cause to appeal, but his request was denied by the trial court. “[W]here, as here, a certificate of probable cause has been denied, the appeal is not operative and the denial of the certificate must be reviewed by writ of mandate.” (*People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188.)

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<sup>3</sup> Section 1237.5 states as follows: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

Here, defendant did not challenge the denial by way of writ of mandate, so he is precluded from obtaining review on the merits of issues challenging the legality of the proceedings and/or the validity of his plea. (See *People v. Mendez* (1999) 19 Cal.4th 1084, 1096-1097.)

We have now concluded our independent review of the record and find no arguable issues.

### III

#### DISPOSITION

The judgment is affirmed.

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MCKINSTER  
Acting P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.